

NO. 42832-6

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Respondent,

v.

OTHNIEL BLANCAFLOR,

Appellant.

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**RESPONDENT'S SUPPLEMENTAL BRIEF**

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## **I. INTRODUCTION**

Othniel Blancaflor and his co-defendant, Cynthia Blancaflor, ran an in-home care facility. They improperly reported employee hours and payroll to the Department of Labor and Industries. Specifically, they filed false quarterly reports in 2007, and neglected to file quarterly reports altogether in 2008 and 2009. As a result, they significantly underpaid the Department for industrial insurance premiums. The Blancaflors were charged with three counts of Employer False Reporting and one count of Theft in the First Degree<sup>1</sup>.

When the matter went to trial, there were 12 jurors and two alternates selected. Before deliberations began, the jurors raised an issue related to juror 3's availability to deliberate. After questioning of juror 3, the court released her, and replaced her with an alternate juror. The record reflects that the jury had not begun to deliberate prior to the alternate juror's arrival, and therefore the judge did not need to reinstruct the jury.

The state filed one charge of False Reporting for each year at issue, instead of charging one count for each quarter. Because reports of employee hours worked are required each quarter and the premiums are due each quarter, the state could have charged one count for each quarter in which the Defendants falsely reported or neglected to report.

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<sup>1</sup> The theft charge was based on failure to pay two workers.

Additionally, the reporting or failure to report was a common scheme or method for each of the three years charged.

This Court should affirm the convictions and sentence.

## **II. ISSUES PERTAINING TO SUPPLEMENTAL ASSIGNMENTS OF ERROR**

1. Did Othniel Blancaflor receive his right to a unanimous and impartial jury when he requested that Juror 3 be excused and replaced with Alternate Juror 1, prior to deliberations beginning?
2. Did the Court properly sentence Othniel Blancaflor for multiple convictions for employer false reporting under RCW 51.48.020 when the conduct was based upon separate units of prosecution?

## **III. SUPPLEMENTAL STATEMENT OF THE CASE**

### **A. Supplemental Facts<sup>2</sup>**

The record makes clear that the jury did not begin to deliberate until after Juror 3 was excused and the alternate juror arrived. After the jury was instructed, they were told they would have some time to deliberate and that the original instructions and exhibits would be brought into the juror room. 6 RP<sup>3</sup> 985. The jury was then told that *they could get started by selecting the presiding juror. Id.* The jury left the courtroom

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<sup>2</sup> The Respondent's Brief sets forth a Statement of Facts. The following additional facts are relevant to the new issues raised in the Supp. Brief of Othniel Blancaflor.

<sup>3</sup> Volume 6 of Verbatim Report of Proceedings.



room at 3:30pm. SCP<sup>4</sup> 9/21/11 at 18. The jury knocked with a question *prior* to receiving the exhibits and jury instructions, at approximately 3:37pm, within seven minutes after leaving the courtroom. *Id.* The attorneys were informed that Juror 3 stated that she had a flight to California the next day. 6 RP 987. Even though the defendants could not be located, Juror 3 was brought into the courtroom and questioned to make sure the record was preserved. 6 RP 987-988, 995. After Juror 3 was questioned, she was instructed to return to court the next day and the jurors were released. 6 RP 989 – 992, 994-995. Thus, on the afternoon that trial ended the jury had about 30 minutes before the end of the day. 6 RP 985. They were told to start by selecting a presiding juror. *Id.* The jury had a total of seven minutes together before they addressed the court with a question. SCP 9/21/11 at 18. During the seven minutes and up to the time the jury was released, they did not receive the jury instructions or exhibits. 6 RP 985, SCP 9/21/11 at 18.

Juror 3 was told that the decision on whether or not she would be a member of the jury would be made the next morning once the defendants arrived. 6 RP 994 - 995. When all the parties were present, including the defendants, the court provided options to consider. One option presented

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<sup>4</sup> Supplemental Clerks Papers are the clerk's minutes, which reference the page number of the minutes, and the date.

was that “we instruct the jury to *commence* deliberations.” 7 RP<sup>5</sup> 1000, (emphasis added). The other option presented was to excuse Juror 3 and call alternate juror No. 1. *Id.* Both defendants requested that Juror 3 be excused and that the alternate juror be called. *Id.*

The court pointed out the unusual circumstance in this case, stating:

“ . . . usually, dismissing somebody happens after deliberations have started. *They haven’t actually started their deliberations.* They have been delayed in the start, so I think we should instruct the jury that they are to remain in the jury room; *that deliberations are delayed* until we can get the alternate present.”

7 RP at 1001 (Emphasis added.) It was then agreed that the jury would be instructed on the record not to start deliberations until the alternate juror was present. 7 RP 1001. The entire jury panel was brought into the courtroom at 9:09 am and the Judge excused Juror 3. 7 RP at 1002, 2/22/11 at 20. The Judge then instructed the remaining jurors that they must wait until all 12 jurors were present *before deliberations could begin.* *Id.*; *see also*, SCP 2/22/11 at 20. The Court further stated that once the alternate juror arrived, the jurors would be given the jury instructions and admitted exhibits and could then begin their deliberations. *Id.*

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<sup>5</sup> Volume 7 of Verbatim Report of Proceedings.

The alternate juror arrived at approximately 10:32 am. At that time the jury was given the exhibits and packet of jury instructions. SCP 2/22/11 at 20. All the jurors' electronic devices were collected. *Id.* The jury began deliberations and returned a verdict at approximately 2:15 pm *Id.*

Othniel Blancaflor committed a crime each time he filed a quarterly report containing false information or failed timely file a quarterly report. The quarterly reports were filed in the first, second and third quarters of 2007, with false information. Ex. 6. The quarterly reports of 2008 were filed by email falsely reporting no employee hours or payroll in the first, second, and third quarter of 2008. Ex. 10A, 10B. Further, the business reported that there would be no workers in the future until further notice, thus failing to report hours or payroll as required in the fourth quarter of 2008 and the first two quarters of 2009. Ex. 10C. Despite the fact that a crime occurred with each quarterly report, the Othniel Blancaflor was only charged with three counts of employer false reporting, one count for each year.

In sum, the record reflects that the jury did not begin deliberating until after the alternate juror arrived. Moreover, the defendant falsely reported every time he filed a quarterly report with false information or failed to file a quarterly report at all.

#### IV. ARGUMENT

##### A. Othniel Blancaflor Was Convicted Of All Charges By A Unanimous And Impartial Jury

1. **The jurors did not start to deliberate until the alternative juror arrived, therefore, the judge was not required to reinstruct the jury.**

Othniel Blancaflor received a trial by a unanimous and impartial jury, as evidenced by the record. Only when a jury has actually commenced deliberations prior to the replacement of an initial juror with an alternative juror, does the jury need to be instructed to disregard all previous deliberations and begin anew. *State v. Ashcraft*, 71 Wn. App. 444, 461, 859 P.2d 60 (1993). “An appellate court must be able to determine *from the record* that jury unanimity has been preserved.” *Id.* at 464-65 (emphasis in original.)

At the close of trial, the jury was instructed that all 12 jurors must be present when deliberating. 6 RP 984. They were also instructed to first choose a presiding juror, and that any deliberations would have to end at 4:00pm. 6 RP 985. The jury left the courtroom at 3:30 pm and at 3:37 pm, within seven minutes, the jury identified an issue – that Juror 3 might not be able to be present for the entire time required of them to deliberate. SCP 9/21/11 at 18.

The Judge properly assembled the attorneys and the defense attorneys tried to contact the defendants. 6 RP 988. In order to insure that the record was preserved should Juror 3 decide not to come back, the court questioned the juror and allowed counsel to question the juror. 6 RP 989 – 992. After that time, the jury was released with instruction to come back the next day. 6 RP 995.

Once both defendants and all counsel were present the Judge addressed the issue of juror 3 and whether or not to release her from the jury. 7 RP 1000. Both defendants requested the juror 3 be released and that the alternate take juror 3's place. *Id.*

It is clear from the record that the jurors did not begin deliberations until after juror 3 had been replaced with the alternate. 7 PR 1001. The Judge stated, “[t]hey haven’t actually started their deliberations.” 7 RP 1001. Thus making clear on the record that no deliberations had begun. The defendant has raised no evidence that the Judge’s statement was a false one.

Instead the defendant claims that because the deliberations were approximately 3 hours long, it “. . . increases the likelihood that the jurors relied on prior deliberations to reach the final verdict.” Supplemental Brief of Othniel Blancaflor (Supp. Brief) at 12 – 13. This statement

assumes there was prior deliberation that occurred after the jury contacted the court about juror 3 and before juror 3 was called into the courtroom.

However, the length of the deliberations lends no credence to the defense argument that the jury began deliberations before the alternate juror arrived. The evidence in this case was straightforward and easily discernible, as demonstrated in the Respondent's Brief addressing the sufficiency of evidence. Once the alternate juror arrived, deliberations took approximately 3 hours and 15 minutes. This amount of time is reasonable in light of the overwhelming evidence in the case, and does not establish that the jury deliberated prior to the alternate's arrival.

In fact, it would not make any sense to *presume* that the jurors had started deliberations at the end of the day on February 21, 2011, given that they had not received the admitted exhibits or the original jury instructions; there is no indication that their electronic devices had been collected yet;<sup>6</sup> and, it would not make sense for the jury to raise the question of Juror 3's availability and then start to deliberate in the 20 or so minutes before the end of the day.<sup>7</sup> SCP 2/22/11 at 18, 20.

Because the record reflects that the jury did not begin deliberations until after the alternate juror arrived there was no requirement that the

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<sup>6</sup> See, 6 RP at 985. *Compare* SCP 9/21/11 at 18; SCP 9/22/11 at 20.

<sup>7</sup> The Court had instructed that the jury would need to conclude the day at 4:00pm. 6 RP at 984.

Judge instruct the jurors to begin deliberations anew. Therefore, there is no reversible error in this case.

**2. There was no reason to believe that the alternate juror had not remained impartial and unbiased.**

The defendant implies that the court should have questioned the alternate juror when she arrived at court on Sept. 22, 2011 to verify that she remained impartial and unbiased. *See*, Supp. Brief at 4-5. However such inquiry was not required. CrR 6.5 permits a brief voir dire of a previously excused juror. *State v. Johnson*, 90 Wn. App. 54, 73, 950 P.2d 981 (1998). However, the trial court's decision to replace a juror with an alternate juror, and allow for brief questioning of the alternate is reviewed under an abuse of discretion standard. *Id.*

In this case, the court held a brief hearing to determine if an alternate should replace juror 3. At that time, no one requested that the alternate be questioned. The alternate was released at approximately 3:26 p.m. on Sept. 21, 2011, and returned to court at approximately 10:30 a.m. the next day, Sept. 22, 2011. 6 RP 983; SCP 9/21/11 at 18; SCP 9/22/11 at 20. With such a short time in between the release of the alternate and the return to court, there was no reason to believe that the alternative juror's impartiality had changed. Therefore, the court did not abuse its discretion by not questioning the alternate juror.

**B. The State Did Not Abuse Its Prosecutorial Discretion By Charging The Defendant With Three Counts Of Employer False Reporting Based Upon Multiple Reporting Periods During the Three Separate Charging Periods**

When a defendant is convicted of multiple violations of the same statute, the double jeopardy question focuses on what “unit of prosecution” the Legislature intends as the punishable act under the statute. *In re Personal Restraint of Davis*, 142 Wn.2d 165, 172, 12 P.3d 603 (2000); *State v. Tili*, 139 Wn.2d 107, 113, 985 P.2d 365 (1999); *State v. Adel*, 136 Wn.2d 629, 634, 965 P.2d 1072 (1998). A criminal statute may limit the prosecutor’s discretion to file multiple charges if it mandates that particular conduct must be charged as one count. *State v. Knutson*, 64 Wn. App. 76, 80, 823 P.2d 513 (1991). Whether a criminal statute permits multiple counts is a matter of statutory interpretation. *Id.*

This question is resolved by examining the relevant statute in order to ascertain what the Legislature intended. *Davis*, 142 Wn.2d at 172; *State v. Jacobs*, 154 Wn. 2d 596, 600, 115 P.3d 281 (2005). Put another way, in *Adel* the court stated that it must be determined what the Legislature intended as the punishable act under the specific criminal statute. *Adel*, 136 Wn.2d at 634.

Where the statute’s meaning is plain on its face, the court must give effect to that meaning and the Legislative intent. *State v. Jacobs*, 154



Wn. 2d at 600. However, the Washington Supreme Court has made clear that the plain meaning of a statute is not derived merely from the words used:

The “plain meaning” of a statutory provision is to be discerned from the ordinary meaning of the language at issue, as well as from the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.

*Id.*, (citation omitted); *State, Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002).

“While a statute is ambiguous if it is susceptible to two or more reasonable interpretations, it is not ambiguous merely because different interpretations are conceivable.” *Tili*, 139 Wn.2d at 115, *citing*, *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996) , (*citing* *State v. Sunich*, 76 Wn .App. 202, 206, 884 P.2d 1 (1994)). Only if the Court determines that the statute is ambiguous does the rule of lenity apply. *Id.* Where there is no threshold showing of ambiguity, the court determines a statute's meaning from plain language of statute itself, and does not consider the rule of lenity. *Id.* (citations omitted.)

**1      The proper interpretation of the Legislative intent of RCW 51.48.020(1)(b) is a unit of prosecution for each quarter a report and premiums are due.**

In *Campbell & Gwinn*, the Court looked at the statute at issue, together with other statutes in the same title and/or statutory scheme.

*Campbell & Gwinn, L.L.C.*, 146 Wn.2d at 12-13. By use of the statutory provision, related provisions, and the statutory scheme as a whole, the Court determined the plain meaning of the statute at issue. *Id.* at 12-13, 16. This Court should do the same in the present case.

In the present case, the statute at issue is RCW 51.48.020(1)(b) which states:

An employer is guilty of a class C felony, if:

- (i) The employer, with intent to evade determination and payment of the correct amount of the premiums, knowingly makes misrepresentations regarding payroll or employee hours; or
- (ii) The employer engages in employment covered under this title and, with intent to evade determination and payment of the correct amount of the premiums, knowingly fails to secure payment of compensation under this title or knowingly fails to report the payroll or employee hours related to that employment.

The defendant argues that the “. . . language of the statute indicates an expectation of on-going acts by an employer.” Supp. Brief at 17. To support this proposition the defense points to the words “misrepresentations” “premiums,” and “employee hours” as being plural, concluding that the Legislative intent was to define the unit of prosecution to include multiple acts over an undetermined period of time. Supp. Brief at 17- 18.

However, merely looking at a single word is not instructive as to the Legislative intent. *State v. Sutherby*, 165 Wn.2d 870, 204 P.3d 916 (2009) is illustrative. In this case, the use of the word premiums is a good example. Premium is used both in the plural and singular noun to mean a sum of money paid for a contract of insurance. Webster's Third New International Dictionary Unabridged, (2002); *see also*, Merriam-Webster online dictionary, available at <http://www.merriam-webster.com/dictionary/premium>, (visited October 22, 2013) (examples of premium: "Health insurance premiums went up this year.")

Premiums are defined in Title 51 RCW as "... premium and/or premiums . . . shall be construed as to mean taxes which are the money payments by an employer . . . required by this title." RCW 51.08.015. This definition demonstrates that the mere use of the word "premiums" in RCW 51.48.020(1)(b) does not equate to all premiums assessed and owing regardless of the period of time.

Additionally, the use of the word "employee hours" does not equate to a continuing offense regardless of how many false reports are filed. From reading the entire section of RCW 51.48.020(1)(b), it is clear that "employee hours" assumes that the employee, or employees, worked more than a single hour; the plural does not indicate an intent to create a continuing offense. Similarly, with regard to "misrepresentations," there

is no indication that the plural use of the word means anything other than during the reporting period, the employer may misrepresent more than a single fact.

The defendant has not made a threshold showing that the statute is ambiguous; therefore, the rule of lenity should not be applied. The Court should uphold the defendant's convictions, as the proper unit of prosecution is each quarter.

**2. Review of the entire statutory scheme provides further evidence of the Legislative intent that the unit of prosecution is each quarter.**

The Employer's False Reporting statute, RCW 51.48.020(1)(b), must be read with the related provisions and the statutory scheme of Chapter 51 RCW. Both RCW 51.48.020 (1)(b)(i) and (ii) refer to the ". . . intent to evade the determination and payment of the correct amount of premiums. . . ." Additionally, RCW 51.48.020(1)(c) provides:

Upon conviction under (b) of this subsection, the employer shall be ordered by the court to pay the premium due and owing, a penalty in the amount of one hundred percent of the premium due and owing, and *interest on the premium* and penalty *from the time the premium was due* until the date of payment.

(Emphasis added.)

Moreover, an employer, who is not self-insured, is required to obtain industrial insurance coverage through the Department for his/her

workers. RCW 51.16.060. Every employer is required to furnish the Department with a “. . .true and accurate payroll . . .” *for each quarter* in which the employer had employees. *Id.*

The payroll must be reported *each quarter*, and the premiums are to be paid each quarter. *Premiums* for a calendar quarter, whether reported or not, shall *become due* and delinquent on the day immediately following the last day of the month following the calendar quarter.

RCW 51.16.060 (Emphasis added.) The premiums due are calculated using the total number of employee hours worked and the risk classification of the employee’s position. *Id.*, RCW 51.16.035.

In reviewing all these statutes together, it becomes clear that the Legislature intended the unit of prosecution to be each quarter. The premiums are due and owing each quarter. The Employer is required to submit reports of employee hours each quarter. If a person is convicted of Employer’s False Reporting they must pay the premium due and the interest from the time the premium was due – which relates back to each quarter.

Reading the statutory scheme of Title 51 RCW as a whole, the Legislative intent was to punish those that did not properly report to the Department each quarter in an attempt to evade the correct amount of premiums due each quarter. Therefore, each violation occurs, and is

complete, when the employer makes a false report or fails to report altogether each quarter.

**3. A review of the Legislative history establishes the unit of prosecution is each quarter.**

Only if the plain meaning of the statute is not clear on its face does the Court look at the Legislative history of the statute. *Campbell & Gwinn, L.L.C.*, 146 Wash.2d at 11-12. Even so, in this case, the Legislative history establishes that the purpose of the law was to address the issue of premiums (taxes) evasion. The changes are more than a mere intent to move the criminal charge from a misdemeanor to a felony as alleged by the defendant. Supp. Brief at 18.

Prior to the Legislative changes enacted under S.B. 5570, 55th Leg. Sess. (Wash.1997, RCW 51.48.020(1) read as follows:

(1) Any employer, who misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department. *If such misrepresentations are made knowingly, an employer shall also be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.*

Former RCW 51.48.020 (Laws of 1995, ch. 160, § 4) (emphasis added) (attached as Appendix A).

The Legislative changes enacted under S.B. 5570 made the criminal offense a class C felony and removed the reference to “felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.” Former RCW 51.48.020 (Laws of 1997, ch. 324, § 1) (attached as Appendix B). This amendment changed the nature of the charge from a theft type offense, with the level of criminal offense based on the amount of loss or anticipated loss for making misrepresentations ranging from a gross misdemeanor to a class B felony. H.B. Rep. on S.B. 5570, 55th Leg., Reg. Sess. (Wash. 1997) (attached as Appendix C). The new criminal statute based the criminal liability on the intent to evade the premiums (taxes) owed; premiums that are due and owing each quarter. Additionally, the amended RCW 51.48.020(1)(b) allowed for a criminal violation whether false information was reported or when no information was reported. H.B. Rep. on S.B. 5570.

The defendant relies on a former RCW 51.48.015, not RCW 51.48.020(1), when referencing the misdemeanor prosecutions that were rarely charged. Supp. Brief at 18. RCW 51.48.015, was repealed by SB 5570. *Id*; *see also*, Final Bill Report, S.B. 5570, 55th Leg. Sess. (Wash. 1997) (attached as Appendix D). According to a House Bill Analysis, each day an employer failed to obtain industrial insurance coverage was a separate offense under former RCW 51.48.015. H.B. Analysis S.B. 5770,

55th Leg., Reg. Sess. (Wash. 1997), attached as Appendix E. In changing the law, the legislature moved from a daily violation for failure to secure coverage, to a violation for each report or reporting period and making it a class C felony for failing to report.

The Legislative history also demonstrates that the crime of employer false reporting amounts to evasion of industrial insurance premiums<sup>8</sup>(taxes). As a result, it is instructive to look to how the federal courts evaluate units of prosecution in tax evasion cases.

In federal tax evasion cases it is clear that the unit of prosecution is based on the regular interval of when the tax is due. Where income tax is due yearly there is no error for filing multiple counts for each year. *United States v. Minker*, 312 F.2d 632, 636 (3d Cir. 1962), *rehg. denied*, *cert. denied* 83 S.Ct. 952, 372 U.S. 953, 9 L. Ed.2d 978 (1963) (*citing*, *United States v. Shaffer*, 291 F.2d 689 (7th Cir.), *cert. denied*, 368 U.S. 915, 82 S.Ct. 192, 7 L.Ed.2d 130 (1961)). Where the tax is required to be reported and paid monthly, “. . .each month of attempted evasion constituted a separate offense.” *Minker*, 312 F.2d at 636, (defendant was charged with willfully attempting to evade wagering excise taxes during a period between November 1959 through March 1960. Each month was

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<sup>8</sup> Each bill report for SB 5570 gives the brief description as “[e]xpanding tax evasion penalties.” *See*, House Bill Analysis, House Bill Report, and Final Bill Report.



charged as a separate violation, as the excise taxes were to be reported and were due each month.) Therefore, in tax evasion cases each required report is a basis for a separate charge. In the present case, each quarter is the basis for a separate charge.

**4. Once the proper unit of prosecution is determined, the charging decision is left the prosecutor's sound discretion.**

A prosecuting attorney's most fundamental role is to decide whether to file and which available criminal charges to file. *State v. Rice*, 174 Wn. 2d 884, 901-02, 279 P.3d 849, 858 (2012). Furthermore, it is a “well-established rule that prosecutors have considerable latitude to either aggregate charges or to bring multiple charges. *State v. Kinneman*, 120 Wn. App. 327, 337, 84 P.3d 882, 887 (2003) *review denied*, 152 Wn.2d 1022, 101 P.3d 108 (2004).<sup>9</sup>

Because the unit of prosecution is each quarter the report was due, and the premiums were owed, the total number of charges in the present case could have been 11 counts.<sup>10</sup> The State was well within its discretion to charge only three counts, combining the misrepresentation and/or

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<sup>9</sup> See also, *United States v. Shorter*, 608 F. Supp. 871, 875-76 (D.D.C. 1985) *aff'd*, 809 F.2d 54 (D.C. Cir. 1987) *abrogated on other grounds by Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993) (in tax evasion case, combining charges that could be charged as single counts is within the sound discretion of the prosecutor.)

<sup>10</sup> One quarter in 2007 would have been outside the statute of limitations.

failing to report by years. Therefore, the convictions and sentence for three counts of Employer's False Reporting should be upheld.

## V. CONCLUSION

The Judge did not need to reinstruct the jury where no prior deliberations occurred prior to the alternate's arrival, as demonstrated from the record. The proper unit of prosecution is each quarter; therefore, it was within the prosecutor's sound discretion to combine the units into three counts connected by time and common scheme. Hence, the defendant's convictions and sentence should be affirmed as the defendant has demonstrated no reversible errors.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of October, 2013.

ROBERT W. FERGUSON

Attorney General

*[Handwritten signature]*  
S. Dan Pullo

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SUSAN SACKETT DANPULLO

WSBA #24249

Assistant Attorney General

# Appendix A

1995 Wash. Legis. Serv. Ch. 160 (S.S.B. 5402) (WEST)

WASHINGTON 1995 LEGISLATIVE SERVICE  
54th Legislature, 1995 Regular Session

Additions are indicated by <<+ Text +>>;  
deletions by <<- Text ->>  
Changes in tables are made but not highlighted. Vetoed provisions  
within tabular material are not displayed.

CHAPTER 160  
S.S.B. No. 5402  
INDUSTRIAL INSURANCE—PENALTIES—DENIAL OF BENEFITS

AN ACT Relating to industrial insurance penalties; amending RCW 51.16.200, 51.32.020, 51.32.040, 51.48.020, 51.48.120, and 51.48.150; adding a new section to chapter 43.22 RCW; prescribing penalties; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 51.16.200 and 1986 c 9 s 6 are each amended to read as follows:

<< WA ST 51.16.200 >>

Whenever any employer quits business, or sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any tax payable hereunder shall become immediately due and payable, and the employer shall, within ten days thereafter, make a return and pay the tax due; and any person who becomes a successor to such business shall become liable for the full amount of the tax and withhold from the purchase price a sum sufficient to pay any tax due from the employer until such time as the employer shall produce a receipt from the department showing payment in full of any tax due or a certificate that no tax is due and, if such tax is not paid by the employer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax, and the<sup>1</sup> deemed a payment upon the purchase price, and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due such successor from the employer.

<sup>1</sup>So in original.

No successor may be liable for any tax due from the person from whom <<- that person->> <<+the successor+>> has acquired a business or stock of goods if <<-that person->> <<+the successor+>> gives written notice to the department of such acquisition and no assessment is issued by the department within <<-sixty->> <<+one hundred eighty+>> days of receipt of such notice against the former operator of the business and a copy thereof mailed to such successor.

Sec. 2. RCW 51.32.020 and 1977 ex.s. c 350 s 39 are each amended to read as follows:

<< WA ST 51.32.020 >>

If injury or death results to a worker from the deliberate intention of the worker himself or herself to produce such injury or death, or while the worker is engaged in the attempt to commit, or the commission of, a felony, neither the worker nor the widow, widower, child, or dependent of the worker shall receive any payment under this title.

<<+If injury or death results to a worker from the deliberate intention of a beneficiary of that worker to produce the injury or death, or if injury or death results to a worker as a consequence of a beneficiary of that worker engaging in the attempt to commit, or the commission of, a felony, the beneficiary shall not receive any payment under this title.+>>

An invalid child, while being supported and cared for in a state institution, shall not receive compensation under this chapter. No payment shall be made to or for a natural child of a deceased worker and, at the same time, as the stepchild of a deceased

worker.

Sec. 3. RCW 51.32.040 and 1987 c 75 s 7 are each amended to read as follows:

<< WA ST 51.32.040 >>

<<+(1) Except as provided in RCW 43.20B.720 and 74.20A.260, no money paid or payable under this title shall, except as provided for in RCW 43.20B.720 or 74.20A.260, prior to<> <<+before+>> the issuance and delivery of the check or warrant <<-therefor->>, be <<-capable of being->> assigned, charged, or <<-ever be->> taken in execution <<-or->><<+,+>> attached <<-or->><<+,+>> garnished, <<-nor shall the same->> <<+or+>> pass<<-,->> or be paid<<-,->> to any other person by operation of law, <<-or by->> any form of voluntary assignment, or power of attorney. Any such assignment or charge <<-shall be->> <<+is+>> void<<-,->> unless the transfer is to a financial institution at the request of a worker or other beneficiary and <<+made+>> in accordance with RCW 51.32.045 <<-shall be made: PROVIDED, That->><<+,+>>

<<+(2)(a) I>>>f any worker suffers <<+(i)>> a permanent partial injury<<-,->> and dies from some other cause than the accident which produced <<-such->> <<+the+>> injury before he or she <<-shall have received->> <<+receives+>> payment of <<-his or her->> <<+the+>> award for <<-such->> <<+the+>> permanent partial injury<<-,->> or <<-if any worker suffers->> <<+(ii)>> any other injury before he or she <<-shall have received->> <<+receives+>> payment of any monthly installment covering any period of time <<-prior to->> <<+before+>> his or her death, the amount of <<-such->> <<+the+>> permanent partial <<+disability+>> award<<-,->> or <<-of such->> <<+the+>> monthly payment<<+,+>> or both, shall be paid to the surviving spouse<<-,->> or <<-to->> the child or children if there is no surviving spouse<<-: PROVIDED FURTHER, That->><<+,+>>

<<+(b) I>>>f any worker suffers an injury and dies <<- therefrom->> <<+from it+>> before he or she <<-shall have received->> <<+receives+>> payment of any monthly installment covering time loss for any period of time <<-prior to->> <<+before+>> his or her death, the amount of <<-such->> <<+the+>> monthly payment shall be paid to the surviving spouse<<-,->> or <<-to->> the child or children if there is no surviving spouse<<-: PROVIDED FURTHER, That->><<+,+>>

<<+(c) A>>>ny application for compensation under <<-the foregoing provisos of this section->> <<+this subsection (2)+>> shall be filed with the department or self-insuring employer within one year of the date of death<<-: PROVIDED FURTHER, That->><<+. However,+>> if the injured worker resided in the United States as long as three years <<-prior to->> <<+before+>> the date of injury, <<-such->> payment <<+under this subsection (2)+>> shall not be made to any surviving spouse or child who was at the time of the injury a nonresident of the United States<<-: PROVIDED FURTHER, That->><<+,+>>

<<+(3)(a) A>>>ny worker <<+or beneficiary+>> receiving benefits under this title who is subsequently confined in, or who subsequently becomes eligible <<-therefor->> <<+for benefits under this title+>> while confined in<<+,+>> any institution under conviction and sentence shall have all payments of <<-such->> <<+the+>> compensation canceled during the period of confinement <<-but->><<+. A>>>fter discharge from the institution<<+,+>> payment of benefits <<-thereafter->> due <<+ afterward+>> shall be paid if <<-such->> <<+the+>> worker <<+or beneficiary+>> would, <<-but->> <<+except+>> for the provisions of this <<-proviso->> <<+subsection (3)+>>, otherwise be entitled <<- thereto: PROVIDED FURTHER, That->> <<+to them.+>>

<<+(b) I>>>f any prisoner is injured in the course of his or her employment while participating in a work or training release program authorized by chapter 72.65 RCW and is subject to the provisions of this title, he or she <<-shall be->> <<+is+>> entitled to payments under this title<<+,+>> subject to the requirements of chapter 72.65 RCW<<+,+>> unless his or her participation in <<-such->> <<+the+>> program has been canceled, or unless he or she is returned to a state correctional institution, as defined in RCW 72.65.010(3), as a result of revocation of parole or new sentence<<-: PROVIDED FURTHER, That->><<+,+>>

<<+(c) I>>>f <<-such incarcerated->> <<+the confined+>> worker has <<+any beneficiaries+>> during <<-such->> <<+the+>> confinement period <<+during which benefits are canceled under (a) or (b) of this subsection+>>, <<-any beneficiaries,->> they shall be paid directly the monthly benefits which would have been paid to <<-him or her->> <<+the worker+>> for himself or herself and <<-his or her->> <<+the worker's+>> beneficiaries had <<-he or she->> <<+the worker+>> not been <<-so->> confined.

<<+(4)+>> Any lump sum benefits to which <<-the->> <<+a+>> worker would otherwise be entitled but for the provisions of <<-these provisos->> <<+this section+>> shall be paid on a monthly basis to his or her beneficiaries.

Sec. 4. RCW 51.48.020 and 1987 c 221 s 1 are each amended to read as follows:

<< WA ST 51.48.020 >>

(1) Any employer, who misrepresents to the department the amount of his or her payroll ~~<<or employee hours>>~~ upon which the premium under this title is based, shall be liable to the state in ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department. If such misrepresentations are made knowingly, an employer shall also be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

Sec. 5. RCW 51.48.120 and 1986 c 9 s 10 are each amended to read as follows:

<< WA ST 51.48.120 >>

If any employer should default in any payment due to the state fund the director or the director's designee may issue a notice of assessment certifying the amount due, which notice shall be served upon the employer by mailing such notice to the employer by certified mail to the employer's last known address<<-, accompanied by an affidavit of service by mailing,->> or served in the manner prescribed for the service of a summons in a civil action. Such notice shall contain the information that an appeal must be filed with the board of industrial insurance appeals and the director by mail or personally within thirty days of the date of service of the notice of assessment in order to appeal the assessment unless a written request for reconsideration is filed with the department of labor and industries.

Sec. 6. RCW 51.48.150 and 1987 c 442 s 1119 are each amended to read as follows:

<< WA ST 51.48.150 >>

The director or the director's designee is hereby authorized to issue to any person, firm, corporation, municipal corporation, political subdivision of the state, a public corporation, or any agency of the state, a notice and order to withhold and deliver property of any kind whatsoever when he or she has reason to believe that there is in the possession of such person, firm, corporation, municipal corporation, political subdivision of the state, public corporation, or any agency of the state, property which is or shall become due, owing, or belonging to any employer upon whom a notice of assessment has been served by the department for payments due to the state fund. The effect of a notice and order to withhold and deliver shall be continuous from the date such notice and order to withhold and deliver is first made until the liability out of which such notice and order to withhold and deliver arose is satisfied or becomes unenforceable because of lapse of time. The department shall release the notice and order to withhold and deliver when the liability out of which the notice and order to withhold and deliver arose is satisfied or becomes unenforceable by reason of lapse of time and shall notify the person against whom the notice and order to withhold and deliver was made that such notice and order to withhold and deliver has been released.

The notice and order to withhold and deliver shall be served by the sheriff of the county or by the sheriff's deputy, <<+by certified mail, return receipt requested,+>> or by any duly authorized representatives of the director. Any person, firm, corporation, municipal corporation, political subdivision of the state, public corporation or any agency of the state upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice and order to withhold and deliver. In the event there is in the possession of the party named and served with a notice and order to withhold and deliver, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the director or the director's duly authorized representative upon service of the notice to withhold and deliver which will be held in trust by the director for application on the employer's indebtedness to the department, or for return without interest, in accordance with a final determination of a petition for review, or in the alternative such party shall furnish a good and sufficient surety bond satisfactory to the director conditioned upon final determination of liability. Should any party served and named in the notice to withhold and deliver fail to make answer to such notice and order to withhold and deliver, within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the director in the notice to withhold and deliver together with costs. In the event that a notice to withhold and deliver is served upon an employer and the property found to be subject thereto is wages, then the employer shall be entitled to assert in the answer to all exemptions provided for by chapter 6.27 RCW to which the wage earner may be entitled.

NEW SECTION. Sec. 7. A new section is added to chapter 43.22 RCW to read as follows:

The department shall annually compile a comprehensive report on workers' compensation fraud in Washington. The report shall include the department's activities related to the prevention, detection, and prosecution of worker, employer, and

provider fraud and the cost of such activities, as well as the actual and estimated cost savings of such activities. The report shall be submitted to the appropriate committees of the legislature prior to the start of the legislative session in January.

NEW SECTION. Sec. 8. Sections 2 and 3 of this act shall apply from the effective date of this act without regard to the date of injury or the date of filing a claim.

Approved April 27, 1995.

Effective July 23, 1995, 90 days after date of adjournment.

WA LEGIS 160 (1995)

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# Appendix B



1997 Wash. Legis. Serv. Ch. 324 (S.B. 5570) (WEST)

WASHINGTON 1997 LEGISLATIVE SERVICE  
55th Legislature, 1997 Regular Session

Additions are indicated by <<+ Text +>>  
deletions by <<- Text ->>  
Changes in tables are made but not highlighted. Vetoes provisions  
within tabular material are not displayed.

CHAPTER 324  
S.B. No. 5570  
INDUSTRIAL INSURANCE—EMPLOYERS' MISREPRESENTATIONS AND CLAIMANTS' FALSE  
CLAIMS—PENALTIES

AN ACT Relating to tax evasion; amending RCW 51.48.020; repealing RCW 51.48.015; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 51.48.020 and 1995 c 160 s 4 are each amended to read as follows:

<< WA ST 51.48.020 >>

(1) <<+ (a) +>> Any employer, who <<+ knowingly +>> misrepresents to the department the amount of his or her payroll or employee hours upon which the premium under this title is based, shall be liable to the state <<- in ->> <<+ for up to +>> ten times the amount of the difference in premiums paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums. Such liability may be enforced in the name of the department.

<<+ (b) An employer is guilty of a class C felony, if +>> <<- such ->> <<+ +>>

<<+ (i) The employer, with intent to evade determination and payment of the correct amount of the premiums, knowingly makes +>> misrepresentations <<- are made knowingly, an employer shall also be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW ->> <<+ regarding payroll or employee hours, or +>>

<<+ (ii) The employer engages in employment covered under this title and, with intent to evade determination and payment of the correct amount of the premiums, knowingly fails to secure payment of compensation under this title or knowingly fails to report the payroll or employee hours related to that employment +>>.

<<+ (c) Upon conviction under (b) of this subsection, the employer shall be ordered by the court to pay the premium due and owing, a penalty in the amount of one hundred percent of the premium due and owing, and interest on the premium and penalty from the time the premium was due until the date of payment. The court shall +>>

<<+ (A) Collect the premium and interest and transmit it to the department of labor and industries; and +>>

<<+ (B) Collect the penalty and disburse it pro rata as follows: One-third to the investigative agencies involved; one-third to the prosecuting authority; and one-third to the general fund of the county in which the matter was prosecuted +>>

<<+ Payments collected under this subsection must be applied until satisfaction of the obligation in the following order: Premium payments; penalty; and interest +>>

(2) Any person claiming benefits under this title, who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

<< Repealed: WA ST 51.48.015 >>

NEW SECTION. Sec. 2. RCW 51.48.015 and 1971 ex.s. c 289 s 62 are each repealed.

INDUSTRIAL INSURANCE—EMPLOYERS'..., 1997 Wash. Legis....

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Approved May 12, 1997.

Effective July 27, 1997, 90 days after date of adjournment.

WA LEGIS 324 (1997)

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# Appendix C

# HOUSE BILL REPORT

## SB 5570

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**As Passed House-Amended:**  
April 9, 1997

**Title:** An act relating to tax evasion.

**Brief Description:** Expanding tax evasion penalties.

**Sponsors:** Senators Newhouse, Schow, Horn, Heavey, Franklin, Fraser and Oke; by request of Joint Task Force on Nonpayment of Employer Obligations.

**Brief History:**

**Committee Activity:**

Commerce & Labor: 3/24/97, 4/3/97 [DPA].

**Floor Activity:**

Passed House-Amended: 4/9/97, 97-0.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements; Cole; Hatfield and Lisk.

**Staff:** Chris Cordes (786-7103).

**Background:** Employers subject to the state's industrial insurance law must either be insured with the state fund administered by the Department of Labor and Industries or be self-insured.

Penalties for failing to insure. Employers who fail to secure industrial insurance coverage are subject to a maximum penalty of \$500 or double the amount of premiums that were incurred before coverage was obtained, whichever is greater. Employers are also liable for a penalty of 50 to 100 percent of the cost of benefits paid to a worker who is injured before coverage is obtained.

If the employer willfully fails to obtain coverage, the employer is guilty of a misdemeanor with a fine of \$25 to \$100. Each day of violation is a separate offense. If the employer engages in covered employment without a certificate of coverage from the Department of Labor and Industries, the employer is guilty of a gross misdemeanor; if work occurs after the certificate is revoked, the employer is guilty of a class C felony.

Penalties for misrepresentation. An employer who misrepresents the amount of his or her payroll or employee hours on which the industrial insurance premium is based is liable for 10 times the difference in the amount of premiums paid and the amount that should have been paid. If the misrepresentations are knowing, the employer is guilty of a felony or gross misdemeanor under the applicable theft provisions of the state's criminal code (gross misdemeanor to class B felony).

Collection of penalties. Penalties and fines are deposited in either the medical aid or accident funds, as directed by statute.

Task force recommendations. In 1996, Substitute House Bill 2513 created the Task Force on Nonpayment of Employer Obligations. The task force was directed to make recommendations on, among other issues, methods of improving compliance with employer responsibilities for covering workers under state industrial insurance law and other laws.

The task force report in December 1996, included a recommendation that the Legislature should eliminate the employer misrepresentation provisions under the industrial insurance law and add new felony provisions addressing employers who knowingly, with an intent to defraud, make false representations about their obligations or fail to file required information. The task force reported that agency personnel could not recall the prosecution of any employer for failure to insure under the current misdemeanor statute.

**Summary of Bill:** The penalties for employers who violate industrial insurance requirements are modified as follows.

Penalties for failing to insure. The misdemeanor penalty for willfully failing to secure industrial insurance coverage is repealed and new felony provisions are added. Under the new felony provisions, it is a class C felony if an employer knowingly, with intent to evade premium payments:

- (1) fails to secure industrial insurance coverage, or
- (2) fails to report payroll or employee hours.

Penalties for misrepresentation. The civil penalty for an employer who misrepresents the amount of payroll or hours is made a maximum penalty of 10 times the difference in premium paid and premium that should have been paid. The application of the penalty is limited to "knowing" misrepresentation.

The criminal penalties for an employer who knowingly misrepresents its payroll or hours under the state criminal code's theft provisions are deleted and a new felony provision is added. Under the new felony provision, it is a class C felony if an employer knowingly, with intent to evade premium payments makes misrepresentations about payroll or employee hours.

Collection of penalties. On conviction under the new felony provisions, the court must order the employer to pay the premiums due, pay a penalty equal to the premiums due, and pay interest from the time the premium was due.

The premiums and interest collected by the court must be transmitted to the Department of Labor and Industries. The additional penalty collected by the court must be disbursed one-third to the involved investigative agencies, one-third to the prosecuting authority, and one-third to the general fund of the county whether the prosecution occurred.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) Although there is a need for better enforcement of employer obligations to cover their workers for workplace injuries, it is not clear that this bill will enhance enforcement. Criminal penalties are difficult to use because of the high level of proof needed to get a conviction. The "failure to file" penalty is a good idea. The bill is not clear about the relationship between existing penalties and the new penalties. If the felony for "accepting facts that turn out to be false" remains in the bill, it should be amended to ensure that the penalty applies only to "accepting false facts."

**Testimony Against:** None.

**Testified:** (In support) Suzanne Mager, Department of Labor and Industries. (In support, with concerns) Dick Ducharme, Building Industry Association of Washington; and Clif Finch, Association of Washington Business.

# Appendix D

# FINAL BILL REPORT

## SB 5570

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C 324 L 97

Synopsis as Enacted

**Brief Description:** Expanding tax evasion penalties.

**Sponsors:** Senators Newhouse, Schow, Horn, Heavey, Franklin, Fraser and Oke; by request of Joint Task Force on Nonpayment of Employer Obligations.

**Senate Committee on Commerce & Labor**

**House Committee on Commerce & Labor**

**Background:** A significant number of potential criminal fraud cases, many involving hundreds of thousands of dollars, are routinely rejected by the AG's office because the employer never filed a quarterly report and did not, therefore, violate existing felony laws. The current statute on "failure to secure payment of compensation" makes such failure a misdemeanor with a maximum \$100 fine per day. Personnel in the Department of Labor and Industries have no recollection of anyone being prosecuted under the misdemeanor provisions. According to the Assistant Attorney General with the economic crimes unit, that unit has never prosecuted misdemeanors and local prosecutors would generally not consider a misdemeanor prosecution for this offense worth the expenditure of resources.

**Summary:** Misrepresentation of payroll or employee hours is subject to a civil penalty if made knowingly. The penalty of ten times the difference in premiums paid and premiums that should have been paid is made a maximum penalty.

It is a class C felony if an employer, with intent to evade premium payments, knowingly makes misrepresentations about payroll or employee hours, knowingly fails to secure payment of compensation, or knowingly fails to report payroll or employee hours.

On conviction, the court must order payment of premiums due, a penalty equal to the premiums due, and interest. The penalty is disbursed in equal amounts to the investigating agencies, the prosecuting authority, and the county in which the prosecution takes place.

The current misdemeanor penalty for willful failure to secure payment of compensation is repealed.

**Votes on Final Passage:**

Senate	48	0	
House	97	0	(House amended)
Senate	46	0	(Senate concurred)

**Effective:** July 27, 1997



# Appendix E

# HOUSE BILL ANALYSIS

## SB 5570

**Brief Description:** Expanding tax evasion penalties.

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**Sponsors:** Senate Committee on Commerce & Labor (originally sponsored by Senators Newhouse, Schow, Horn, Heavey, Franklin, Fraser, and Oke; by request of the Joint Task Force on Nonpayment of Employer Obligations)

Hearing: March 24, 1997

### BACKGROUND:

#### PENALTIES UNDER THE INDUSTRIAL INSURANCE LAW

Employer penalties for failing to insure workers. Employers subject to the state's industrial insurance law must either be insured with the state fund administered by the Department of Labor and Industries or be self-insured.

Employers who fail to insure their workers are subject to a maximum penalty of \$500 or double the amount of premiums that were incurred before coverage was obtained, whichever is greater. Employers are also liable for a penalty of 50 to 100 percent of the cost of benefits paid to a worker who is injured before coverage is obtained.

If the employer willfully fails to obtain coverage, the employer is guilty of a misdemeanor with a fine of \$25 to \$100. Each day of violation is a separate offense.

Penalties and fines are deposited in either the medical aid or accident funds, as directed by statute.

Employer penalties for misrepresentation. An employer who misrepresents the amount of his or her payroll or employee hours on which the industrial insurance premium is based is liable for 10 times the difference in the amount of premiums paid and the amount that should have been paid. If the misrepresentations are knowing, the employer is guilty of a felony or gross misdemeanor under the applicable theft provisions of the state's criminal code.

Penalties for workers and providers who make misrepresentations. A person who claims industrial insurance benefits and who knowingly gives false information in an application is guilty of a felony or gross misdemeanor under the applicable theft provisions of the state's

criminal code. A person or legal entity that knowingly makes false statements of material facts used in determining rights to payment under the industrial insurance law is guilty of a class C felony.

*Task force recommendations.* In 1996, Substitute House Bill 2513 created the Task Force on Nonpayment of Employer Obligations. The task force was directed to make recommendations on, among other issues, methods of improving compliance with employer responsibilities for covering workers under state industrial insurance law and other laws.

The task force report in December, 1996, included a recommendation that the Legislature should eliminate the employer misrepresentation provisions under the industrial insurance law and add new felony provisions addressing employers who knowingly, with an intent to defraud, make false representations about their obligations or fail to file required information. The task force reported that agency personnel could not recall the prosecution of any employer for failure to insure under the current misdemeanor statute.

## **PENALTIES UNDER STATE REVENUE LAW**

Most businesses are required to register with the Department of Revenue and file business and occupation tax returns. It is a class C felony for a person or entity to engage in business after the revocation of its certificate of registration or to make a false tax return or false statement in a tax return to the Department of Revenue, with intent to defraud the state or evade payment of tax.

## **STATUTE OF LIMITATIONS FOR FELONIES PROSECUTIONS**

The Washington criminal code provides time limits for the prosecution of certain criminal offenses. Felonies subject to limitations generally must be prosecuted within three years of the commission of the crime unless the statute specifically grants a longer statute of limitations.

## **SUMMARY OF BILL:**

### **PENALTIES UNDER THE INDUSTRIAL INSURANCE LAW**

The penalty for an employer who misrepresents the amount of payroll or hours is made a maximum of 10 times the difference in premium paid and premium that should have been paid. The application of the penalty is limited to intentional misrepresentation.

The criminal penalties for an employer who knowingly misrepresents its payroll or hours under the state criminal code's theft provisions are deleted and new felony provisions are added. Under the new felony provisions, it is a class C felony for a person or corporation

to:

- knowingly, with intent fraudulently to evade premium payments, to make a false statement or representation of a material fact in a report or other written document, or electronic transmittal, in connection with the obligation to pay premiums.
- knowingly, with intent fraudulently to evade premium payments, to accept assertions that contain materially false information in connection with the obligation to pay premiums.
- having knowledge of a event material to determination of the obligation to pay premiums, to conceal or fail to disclose the event with intent fraudulently to secure a determination of a lesser amount than is owed.
- having knowledge of the obligation to notify the department, to conceal, fail to file or disclose information with an intent fraudulently to evade premium payments.

In addition to other penalties provided by law, an employer convicted of a class C felony under these new provisions is subject to not more than five years in prison and up to a \$25,000 fine (up to \$100,000 for a corporation). On conviction, the court must order the employer to pay the premiums due, pay a penalty equal to the premiums due, and pay interest from the time the premium was due.

The premiums and interest collected by the court must be transmitted to the Department of Labor and Industries. The additional penalty collected by the court must be disbursed one-third to the involved law enforcement and investigative agencies, one-third to the prosecuting attorney, and one-third to the general fund of the county whether the prosecution occurred.

#### **STATUTES OF LIMITATIONS FOR FELONY PROSECUTIONS**

The new class C felony provisions for employer misrepresentation must be prosecuted within five years after the commission of the felony. The statute of limitations for the following class C felonies are changed from a three-year statute of limitations to a five-year statute of limitations:

- applicable felony theft prosecutions under the criminal code for persons claiming industrial insurance benefits who knowingly give false information required in a claim application.
- prosecutions of persons or legal entities who knowingly make false statements of material facts in connection with an application for payment for industrial insurance services or, having knowledge of an event affecting the right to payment, conceal or

fail to disclose the event with intent fraudulently to secure greater payment than is due.

- prosecutions of persons who engage in business in the state after revocation of their certification of registration with the Department of Revenue or who make a false tax return or false statement in a tax return to the Department of Revenue, with intent to defraud the state or evade payment of tax.

**RULES AUTHORITY:** The bill does not contain provisions addressing the rule-making power of an agency.

**FISCAL NOTE:** Available.

**EFFECTIVE DATE:** Ninety days after adjournment of session in which bill is passed.

# WASHINGTON STATE ATTORNEY GENERAL

**October 30, 2013 - 2:47 PM**

## Transmittal Letter

Document Uploaded: 428326-Responden'ts Supplemental Brief.pdf

Case Name: State v. Othniel Blancaflor

Court of Appeals Case Number: 42832-6

**Is this a Personal Restraint Petition?** Yes ☐ No ☒

### The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

☒ Other: State's Supplemental Brief

### Comments:

No Comments were entered.

Sender Name: Daisy Logo - Email: **daisyj@atg.wa.gov**

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SusanD1@atg.wa.gov  
nancy@washapp.org  
klbanford@mac.com

NO. 42832-6

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

OTHNIEL BLANCAFLOR,

Appellant.

DECLARATION OF  
SERVICE

DAISY LOGO declares as follows:

On Wednesday, October 30, 2013, I deposited into the United States Mail postage prepaid and addressed as follows:

Nancy P. Collins  
Washington Appellate Project  
1511 Third Avenue, Suite 701  
Seattle, WA 98101

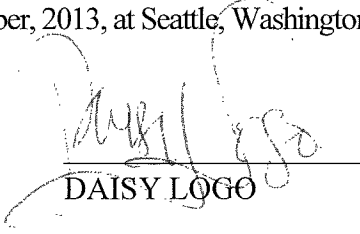
Kenneth Blanford  
Attorney at Law  
P.O. Box 7843  
Tacoma, WA 98417-0843

Copies of the following documents:

- Respondent's Supplemental Brief
- Declaration of Service.

I declare under penalty of perjury under the laws of the state of Washington that the forgoing is true and correct.

EXECUTED this 30th day of October, 2013, at Seattle, Washington.

  
DAISY LOGO

# WASHINGTON STATE ATTORNEY GENERAL

**October 30, 2013 - 2:51 PM**

## Transmittal Letter

Document Uploaded: 428326-Declaration of Service.pdf

Case Name: State v. Othniel Blancaflor

Court of Appeals Case Number: 42832-6

**Is this a Personal Restraint Petition?** Yes ☒ No

### The document being Filed is:

Designation of Clerk's Papers      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_

Answer/Reply to Motion: \_\_\_\_

Brief: \_\_\_\_

Statement of Additional Authorities

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Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_

Hearing Date(s): \_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

☒ Other: Declaration of Service

### Comments:

No Comments were entered.

Sender Name: Daisy Logo - Email: **daisyj@atg.wa.gov**

A copy of this document has been emailed to the following addresses:

SusanD1@atg.wa.gov  
nancy@washapp.org  
kblanford@mac.com